

REMARKS

Status

Claims 1-9 and 17-39 are pending, of which claims 1, 17, 24, 28, and 34 are independent claims. All the claims stand rejected as follows:

- Claims 1-4, 17-18, 28, 34-35, and 38-39 stand rejected under 102(e) as being anticipated by Curry et al. (Pat. 6,493,669).
- Claims 5-8 and 19-22 stand rejected under 103(a) over Curry in view of Epstein (Pat. 5,465,317).
- Claims 24-27 and 36-37 stand rejected under 103(a) over Curry.
- Claims 9 and 23 stand rejected under 103(a) over Curry in view of Epstein further in view of Gammel (Pat. 5,832,429).
- Claims 29-32 stand rejected over Curry in view of Franz et al. (Pat. 6,278,968).
- Claim 33 stands rejected over Curry in view of Gabai et al. (Pat. 6,160,986).

Prior Art Rejections

After the Pre-Appeal Brief Review panel withdrew the rejections of the claims, the Examiner stated that the arguments from the Applicant's Pre-Appeal Brief Request for Review were fully considered but were not considered persuasive, and the Examiner maintained the previous ground of rejection. The Examiner responded to the Applicant's arguments from the Pre-Appeal Brief Request for Review stating that the Applicant "[argued] to traverse the art rejection based on a limitation regarding 'comparing said user's speech command to a plurality of recognized speech commands available in a speech library to determine if said user's speech command is unrecognized speech, as opposed to non-speech' (last paragraph on page 3 of the pre-appeal request)."

While it is true that the Applicant believes a proper *prima facia* rejection of independent claims 1, 17, 24, and 28 could be traversed based on the failure of Curry to explicitly or inherently disclose this limitation, the Applicant stated in the Request that the Examiner has not provided any factual basis for asserting that Curry discloses this limitation, and has thus failed to establish a *prima facia* 35 USC 102(e) rejection of claims 1-4, 17-18, and 28, or a *prima facie* 35

USC 103(a) rejection of claims 5-9, 19-27, and 29-33. The Applicant further argued in the Request that the Examiner has not provided a factual basis to support a *prima facie* 35 USC 102(e) rejection of claims 34-35, and 38-39, or a *prima facie* 35 USC 103(a) rejection of claims 36-37. In particular the Examiner has not provided any factual basis for asserting that Curry explicitly or inherently discloses "using speech models" to identify the audio signal as belonging to one of three or more categories including (a) recognized speech, (b) unrecognized speech, and (c) non-speech."

The Applicant respectfully invites the Examiner to provide a factual basis for both assertions to accord Applicant an opportunity to respond. Otherwise, Applicant will be left to assume that the assertion has no such factual basis, and that the rejections of record are clearly not proper in view of the clear deficiency of not properly establishing a *prima facia* rejection of the claims.

The fact that the Applicant has not made additional comments does not imply that there are not other good reasons for the patentability of the pending claims and additional claims. Also, the Applicant does not necessarily agree with positions taken in the Office Action, for example, related to the teaching of specific references or the grounds for combining multiple references.

Please apply any charges or credits to deposit account 06-1050, referencing Attorney's Docket No. 10663-013001.

Respectfully submitted,

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